IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/04/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1206 of 1993

N.Rukmani Ammal .. Appellant

-Vs-

Janakammal .. Respondent

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 30.4.1993 and made in A.S.No.240 of 1992 on the file of the Court of the Subordinate Judge, Cuddalore, reversing the judgment and decree dated 30.6.1992 and made in O.S.No.262 of 1991 on the file of the Court of the District Munsif, Cuddalore.

!For Appellant : Mr.N.Maninarayanan

^For Respondent : Mr.N.Kannan

:JUDGMENT

The defendant in a suit for recovery of possession of the landed property and a decree for mesne profits, whose defence plea, though accepted by the trial Cour, was rejected by the first appellate forum, has brought forth this second appeal.

2. Short facts necessary for the disposal of this appeal are as follows:
The respondent/plaintiff filed the suit for the said reliefs alleging that the suit property originally belonged to Vaidhyanathan and Gnanasekaran, who sold the same to the plaintiff on 7.1.1980; that pursuant to the same, the plaintiff was the owner of the property; that while so, one Ranganathan obtained an ante dated sale deed from Vaidhyanathan and Gnanasekaran; that thereafter, the plaintiff filed a suit in O.S.No.1543/82 before the District Munsif Court, Cuddalore, for declaration and permanent injunction and in the alternative, for recovery of possession; that in respect of recovery of possession, the suit was dismissed; that on appeal the said judgment was reversed by the appellate forum; that in the said suit, it was found that the defendant herein was a tenant; that the petition submitted by the defendant before the authorities for recording her as a cultivating tenant was rejected; that the defendant filed a suit in O.S.No.784/83 against the plaintiff and others for damages, and the same was dismissed; that there was no appeal against the said judgment; that the plaintiff issued a notice on 21.10.1990 to

the defendant, stating that the defendant has not paid the lease amounts, and the lease period was for five years, and it also ended by 5.4.1982, and thus, the defendant should surrender possession; and that the defendant cannot get benefit under Act 38 of 1990.

3. The suit was contested by the defendant stating that since the defendant was a cultivating tenant, the suit itself was not maintainable; that the defendant was recorded as a cultivating tenant in the record of tenancy; that the suit was hit by res-judicata in view of the judgment in O.S.No.1543/82; that she was entitled to protection under the Cultivating Tenants Protection Act; that she was ready to remit the lease amounts to the plaintiff; that O.S.No.784/83 has no connection to the instant suit, and hence, the suit was to be dismissed.

4. The trial Court framed the necessary issues, tried the suit and dismissed the same. Aggrieved, the plaintiff took it on appeal, wherein the first appellate Court reversed the judgment of the trial Court and granted the decree as prayed for. Hence, this second appeal at the instance of the defendant.

5. At the time of admission, the following substantial question of law was formulated by this Court:

"Is the lower appellate Court correct and justified in reversing the decision of the trial Court and holding that the defendant is not a cultivating tenant and that the Civil Court jurisdiction is not barred?"

6. This Court heard the learned Counsel for the appellant and also the learned Counsel for the respondent on those contentions.

7. As could be seen above, the plaintiff sought for recovery of possession of the landed property, more fully described in the Schedule annexed to the plaint and also for the mesne profits from the defendant stating that the defendant was a tenant under an agreement with the predecessor-in-title by name Vaidhyanathan; that the agreement was only for a period of five years; that the said period was already over; that the plaintiff purchased the suit property under a sale deed on 7.1.1980; that she issued a notice to the defendant terminating her tenancy and calling upon her to surrender possession, and since the defendant failed, the plaintiff has brought forth the suit for the said reliefs. What was all contended by the defendant before the Courts below and equally here also as appellant is that it is true that she entered into an agreement with the predecessor-in-title for a period of five years; that she has already made an application to the authorities to record herself as a cultivating tenant; that it has also been so ordered as evidenced by Ex.B6 dated 19.11.1983; that even in the notice issued by the plaintiff under Ex.A4, the plaintiff has well admitted that the appellant was the lessee in respect of the property belonging to Vaidhyanathan under a lease agreement dated 5.4.1977, and after contest, the suit was decreed for the relief of declaration alone; that she has also admitted the possession of the property by the defendant as a lessee, and thus, it would be abundantly clear that the plaintiff herself has admitted that the defendant was continuing as a cultivating tenant, and in the face of an order passed under Ex.B6 recording the defendant as a cultivating tenant and also in the face of the admission made by the plaintiff under Ex.A4 notice, the defendant has to be protected under the provisions of the Cultivating Tenants Protection Act, and hence, the suit was rightly rejected by the trial Court; but, on an erroneous view, the first appellate Court has set aside the judgment of the

trial Court, and therefore, the judgment of the trial Court has got to be restored.

8. Contrary to the above contentions of the appellant's side, the learned Counsel for the respondent would submit that it is true that the defendant executed an agreement in favour of the respondent/ plaintif in the year 1977, and that was for a period of five years; that the plaintiff purchased the property in the year 1980 for a valuable consideration, and thus, she has become the owner; that she has not received any rental or the lease amount from the defendant at any point of time, nor has she recognised herself as a cultivating tenant at any point of time; that after the period was over, she was to surrender her possession; that it is a case, where even after executing the sale deed in favour of the plaintiff, the said Vaidhyanathan has executed a sale deed in favour of the father of the defendant and the third parties; that the said sale deed was one ante dated; that in the earlier proceedings that was considered by the lower Court, there was a grant of declaration in favour of the plaintiff as to the title to the property; that a perusal of Ex.B6 would clearly indicate that before that forum, the said Vaidhyanathan, who sold the property to the defendant's father and the other parties, after he has already conveyed it to the plaintiff, has deposed that the defendant was a cultivating tenant in respect of the property; that at this juncture, it has to be pointed out that the plaintiff was never a party before that proceedings; that apart from that, originally there was a decree in the instant suit for recovery of possession and for recovery of mesne profits; that the mesne profits would represent the amounts in respect of the unlawful possession of the property; that now the appellant has challenged only that part of the decree, wherein the possession was directed to be handed over, and not in other regards; and that this would also be indicative of the fact that the appeal is without merits.

9. After careful consideration of the rival submissions, this Court is of the considered view that the judgment of the first appellate Court granting the relief in favour of the plaintiff, has got to be sustained.

10. In the instant case, it is not in controversy that the defendant executed an agreement in favour of the original owner Vaidhyanathan in the year 1977 for a period of five years. No material was placed before the trial Court to show that at any point of time, the plaintiff accepted the lease amounts from the defendant. There were earlier proceedings between the parties, pursuant to a sale deed executed by the same original owner Vaidhyanathan in favour of the defendant's father and the third parties, despite the execution of the sale deed in favour of the plaintiff in the year 1980, and on the merits of the matter, the trial Court has found therein that the sale deed in favour of the plaintiff was true and valid and has also been acted upon. The case of the defendant all along in the instant suit was that she was a cultivating tenant, entitled to protection under the Cultivating Tenants Protection Act. According to the learned Counsel for the appellant, Ex.B6 lends support to the defendant's case. A perusal of Ex.B6 would clearly reveal that it was an order passed by a competent authority. The plaintiff, who was the actual owner at that time, was not the party to that proceedings, nor was Vaidhyanathan shown as respondent therein. However, the said Vaidhyanathan who has given a sale deed in favour of the defendant's father and the third parties, subsequent to the sale deed executed in favour of the plaintiff, has deposed that the defendant was a cultivating tenant. It could

be well seen that in order to take revenge, the said Vaidhyanathan would have deposed like that. That apart, so long as the plaintiff, who is the owner of the property, was not a party before the said proceedings, the order under Ex.B6 will not be of no avail to the plaintiff. In the absence of any material to hold that the defendant has been a cultivating tenant in respect of the suit property, the plaintiff was entitled to the relief asked for.

11. The contention of the appellant's side that she has been the tenant holding over cannot also be countenanced for the simple reason that there was no occasion, where payments were made by the defendant regarding the lease amounts to the plaintiff directly; but, only pursuant to the orders of the Court, pending the proceedings, it was made. In such circumstances, the first appellate Court was perfectly correct in setting aside the judgment of the trial Court and granting the relief in favour of the plaintiff. This Court is unable to see any reason to disturb the said finding of the first appellate Court, and hence, the judgment of the first appellate Court has got to be sustained.

12. For the foregoing reasons, this second appeal fails and the same is dismissed, confirming the judgment and decree of the first appellate Court and leaving the parties to bear their costs.

Index: yes
Internet: yes

To:

1. The Subordinate Judge
Cuddalore
2. The District Munsif
Cuddalore
3. The Record Keeper
V.R. Section
High Court, Madras.

nsv/

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